

THE CITY OF BOZEMAN

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BOZEMAN, MONTANA 59771-1230

ENGINEERING DEPARTMENT
PHONE: (406) 582-2280 • FAX: (406) 582-2263

January 14, 2013

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 4
DATE 3-11-2013
BILL NO. HB 146

Clay Vincent, Sanitarian
Hill County Health and Planning
315 4th St.
Havre, MT 59501

RE: Letter of support for House Bill No. 146

Dear Mr. Vincent:

In recent weeks the City of Bozeman has received word that proposed House Bill No. 146 would prohibit the Department of Environmental Quality (DEQ) from collecting annual license fees for a solid waste facility until the facility receives solid waste. In reviewing the bill the City of Bozeman supports this legislative action.

In 2004 the City of Bozeman applied for, and was granted, a license for a solid waste transfer station. At the time the solid waste division for Bozeman was in a state of flux. The operating class II cell that served the city was reaching capacity and the bids for the construction of a new transfer station far exceeded the budget. Ultimately the city chose not to build the transfer station and instead direct hauled the solid waste to the Gallatin County landfill in Logan.

Bozeman kept the transfer station license current for a few years while they determined whether the proposed transfer station would ever become a reality. The annual fees for this transfer station license were \$1,260. In 2007 the city quit paying the license fees. In 2008 the DEQ notified the City that in order to keep the transfer station license current they would need to pay all back charges and the fees for the upcoming 2009 calendar year. At that time the City decided that the required \$3,780 in fees to keep a license for a facility that never was constructed was not in their best interest and let the license lapse. Altogether the City paid for licensing for 2005 and 2006 totaling \$2,520.

At this time the City of Bozeman has no intention of constructing a transfer station or any other solid waste facility and would have no financial gain if House Bill No. 146 were to pass. However, based on the City's experience in paying for a license for a facility that was never operational, the City supports this reasonable piece of legislation.

If you have any questions regarding our experience in this matter please feel free to contact me or Dustin Johnson the project engineer who managed the project at the time at (406)-582-2280.

Sincerely,

Craig Woolard, Ph.D., P.E.
Director of Public Works City of Bozeman

cc: Project File
ERF
Chris Kukulski, City Manager City of Bozeman

HOME OF MONTANA STATE UNIVERSITY
GATEWAY TO YELLOWSTONE PARK

Clay Vincent, Sanitarian, Planner, Landfill Admin.

Hill County, Montana

January 14, 2013

I am here to represent my landfill Board and the public who pay taxes in North Central Montana. Governments' main responsibility is to create order for a large amount of people including areas of transportation, clean water and sewage disposal. Government is not a business but serves the needs of the people. Profits are not to be made but costs must cover the services provided.

I currently work with a lot of DEQ staff and they have helped me through a lot of difficult solid waste problems. I believe that the question of charging fees is a miss-interpretation of state authority by state lawyers and needs to be changed.

When a department or agency levees ongoing fees on projects that are not built, that have not been occupied, or completed approval conditions set forth by the government agency, it is not appropriate or legal. As I understand, the Montana legislature established a fee for service system. It seems that the statute "fee for service" is not being followed.

(chart) --- Time line and fees paid ---

In this case a proposed new landfill application was submitted along with the \$12,000 application fee. The application was reviewed, public hearings were held and the DEQ authorized this project to proceed under certain conditions. The conditions included monitoring wells, fences, roads, and to follow the engineering plans. It was noted at the beginning of the project that this process would probably take about 2 years to complete. A permit was issued that allowed the project to proceed and then a bill was sent to my office. This project was now

required to pay over \$1000 per quarter to the DEQ for having a permit. (these projects are not allowed to move any dirt or build any structure before DEQ approval is received)

(chart) -- red numbers and fees requested ---

I questioned this fee and asked the DEQ why we were required to pay a quarterly fee for a landfill that was not able to receive garbage. At that time nothing existed on the site except for a wheat field. I indicated that if I have a permit, that I should be able to start using it for garbage disposal. DEQ responded and said that we did not meet their conditions and we could not use this site for a landfill. I reminded them that I had a permit and I was paying fees, but they said that the permit was not for that purpose until the site was approved.

During this period of time, I was also paying fees on the existing landfill site in the amount of \$3100 per quarter. The issue is that we were paying for landfill fees for our current site and now we were required to pay more fees for a wheat field. DEQ also requires that we have an engineer approval for all work that is performed on the landfill project and that all conditions are met before we can open the new site and begin receiving garbage.

So this means that we (the public/ landfill district) are paying an engineer \$100 - \$200 per hour to oversee all work, along with \$12,000 for DEQ to review this application, and we have nothing on the site but a wheat field and are required to pay fees to DEQ for a permit with multiple conditions that are not met. In all other agencies including water quality, subdivisions and public health, if plans are reviewed and approval is given with conditions then the application fees cover the time it takes to install all the conditions they required to gain approval.

The applicant should not be continually charged quarterly fees when the site is not approved.

Example: A 5 lot subdivision application is received along with the application fee. My office reviews the application and holds a meeting with the Planning Board or the public. The local government then issues an approval, disapproval or approval with conditions. (these might include installing streets, water, sewer, storm drains, utilities, etc...) The subdivision is then allowed to continue with their project and develop their subdivision. (usually 2-3 years is allowed) Because it will generally take several months if not years to build, my office keeps track of all conditions to make sure they have been completed. The contractor's engineer submits reports as phases are completed and then signs off on each project. They are not charged an on going fee to review what they are doing because the conditions set on the original permit are still not met.

Example 2: If any one in the room wants to build a house and comes in with plans and a permit is issued by the local government, how would you feel if you received an additional bill or fee each month from the government until it was completed? In the DEQ situation the more conditions imposed the longer the project takes, the more fees will be collected with no work involved. Remember that the site engineer must sign off on the project before DEQ will accept it.

When asked what service DEQ was providing for these quarterly fees, my office was given a list of phone calls, letters and time sheets turned in by DEQ staff. (attachment Declaratory Ruling 2012-1-SW p. 7) Quote—(read 3rd 4th and 5th Paragraph-- When we reviewed these (attachment p.10 and 12), it actually showed that one half of the contacts were

from employees of DEQ trying to get me to pay for their fees. The other half, I believe was DEQ employees reviewing the engineer's as-built plans on the conditions imposed by the DEQ on the original application. (Discuss chart 12)

This type of government regulation hurts local businesses and people and increases the bureaucracy around community projects. I cannot believe the legislature ever intended to allow state government to charge fees on a non-existent project or on conditions they imposed for a project to be completed. Some projects may not be completed for years, but fees are still required by DEQ Solid Waste for some reason. No other department does this and it certainly does not meet the "fee for service" definition.

DEQ may incur some liability if they have engineers or non-engineers review a project engineer's plan and then approve or disapprove those plans. In other words, whose responsibility would it be if an approved project fails and it was approved by the project engineer and the DEQ reviewing personnel? The application fee of \$12,000 is plenty to review a project and then review the conditions as they are completed. It may even be too much on some projects. So, --- There were no inspections done, ---No waste collected

---No sign off by project engineers, but fees were still required of over \$9,000.

In this case, the DEQ has developed its own rules to benefit itself and has dismissed all common practices when it comes to dealing with local projects and licensing fees. I am requesting that DEQ not be allowed to charge fees for projects that are not completed and still have conditions to meet. When a conditional approval is issued, it must guarantee that when these conditions are met, a permit including fees will be applied to the project as it begins operations. This income will then be used to offset regulators time and expenses.

Analysis

I. Does the Department have discretion to issue a preliminary, initial, or conditional license to a person operating a solid waste landfill so that no annual renewal fee will be due until the landfill starts receiving waste?

As described above, the solid waste laws and rules provide for an application for a license, and for issuance of a license if requirements are satisfied. An annual fee is required for each year after a license is issued. Once a license is issued, construction may proceed when rules and conditions of applicable plans are satisfied. Waste may be received if regulatory requirements are satisfied. There is no provision in the solid waste laws or rules for a preliminary, initial, or conditional license.

→ UDD states that the "license was conditioned on construction of the engineered plans including 10 listed items noted on Attachment B." It is true that the Department did include conditions when it issued the license. However, these conditions did not make the license preliminary, initial, or conditional. Rather, a full license was issued, with requirements that had to be met when the landfill was constructed and before it first received waste and continuously afterwards.

→ The conditions in Attachment B were those requirements that the Department believed were especially relevant to the New Landfill and that it wished to emphasize to the licensee: that construction had to comply with submitted and approved plans, and that the landfill, once receiving waste, had to be operated properly concerning litter control (in a very windy area), contaminated soils, ozone-depleting compounds, water protection, and air quality.

→ The issuance of the license was not delayed pending satisfaction of the conditions listed in Attachment B. Once UDD satisfies the regulatory requirements and license conditions, and obtains any necessary approvals, it is entitled to receive waste at the New Landfill.

In summary, the license conditions in Attachment B did not make the issuance of the license for the New Landfill dependent on satisfaction of the conditions. Rather, the conditions were requirements of construction or operation, and failure to comply with them could subject the UDD to enforcement.

Therefore, the ruling on the first question is that the Department does not have discretion to issue a preliminary, initial, or conditional license to a person operating a solid waste landfill, and that an annual license renewal application fee will be due during each year after the license was issued, regardless of whether the landfill is receiving waste.

II. Is a landfill licensee excused from paying the annual fee provided for in ARM 17.50.410, Table 1, during the period starting when the Department issues a license and ending when the landfill first receives waste because the fee constitutes a prohibited confiscatory tax, or because the fee violates the intent of the Legislature in § 75-10-115(1)(b), MCA, that the fee "reflect[] a minimal base fee related to the fixed costs of an annual inspection and license renewal"?

UDB argues, in the Petition at p. 5, that because the landfill was not open and

receiving waste from the date it was licensed, October 27, 2009, until October 2011, and the Department was therefore not inspecting or incurring any expense for a renewal, the fee is not related to services, and is therefore a confiscatory tax. UDD further argues that the fee violates legislative intent, because the fact that the Department did not conduct an inspection means that the fee was not related, as § 75-10-115(1)(b), MCA, requires, to the "costs of an annual inspection and license renewal."

These arguments are not persuasive, for two reasons. First, the Department did incur significant costs for regulation of the New Landfill during that period. Second, the fee was set based on a reasonable estimate of the costs of regulation. Because the annual fee is reasonably related to the estimated costs of the Department's regulation of the landfill, it is a fee and not an unreasonable tax. The fee is related to the estimated costs of an annual inspection and license renewal, and so does not violate the intent of § 75-10-115(1)(b), MCA.

The Montana Supreme Court has established a three-part test for determining if a particular assessment is a tax. In *Montana -Dakota Utilities Co. v. City of Billings*, 2003 MT 332, ¶ 25, 318 Mont. 862, 80 P.3d 1247 (MDU), the Court stated that it has held that "a governmental demand for money made for the purposes of raising revenue is a tax. ... If the charges are primarily tools of regulation, they are not taxes." *Id.* The Court referred to the following three-part test from a Washington case, *City of Lakewood v. Pierce County* (2001), 106 Wn. App. 63, 23 P.3d 1, to determine if a purported fee constituted a tax:

1. Whether the primary purpose is to raise revenue or regulate;
2. Whether the money collected is allocated only to the authorized regulatory purpose; and
3. Whether there is a direct relationship between the fee charged and the service received by those who pay the fee or between the fee charged and the burden produced by the fee payer.

MDU, ¶ 23. See also MDU, ¶ 25, citing *Lechner v. City of Billings* (1990), 244 Mont. 195, 797 P. 2d 191; *Montana Innkeepers Assoc. v. City of Billings* (1983) 206 Mont. 425, 671 P.2d 21; and *Brueggemann v. City of Billings* (1986), 221 Mont. 375, 719 P.2d 768; and 16 E. McQuillin, *Municipal Corporations*, § 44.02 at 2 (3rd ed. Supp. 2003).

When applying the first part of the MDU test, whether the primary purpose is to raise revenue or regulate, the language of §§ 75-10-115(1) and 75-10-106, MCA, is instructive. Those sections authorize the solid waste fees that are at issue in this matter. Section 75-10-115(1), MCA, provides that "(1) The department may prepare rules for adoption by the [Montana Board of Environmental Review, or BER] ... that set fees for the management and regulation of solid waste at facilities subject to regulation pursuant to [Title 75, chapter 10, part 2, MCA]. Upon adoption by the [BER], the department may collect the fees. These fees may include: ... (b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal"

Then § 75-10-106, MCA, requires the BER to "adopt rules necessary for the implementation of this part, including but not limited to rules governing ... (2) the

application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems prepared by the department pursuant to 75-10-104 and 75-10-115."

Therefore, the statutory language at issue affirmatively states that the fees assessed are to be assessed "for the management and regulation" of regulated solid waste management facilities. The fees are not assessed for raising revenue generally. So, application of the solid waste law to the first prong of the *MDU* test lends support to a conclusion that the flat annual renewal fee is regulatory, and therefore a fee, and not a tax.

The second prong of the *MDU* test, whether the money collected is allocated only to the authorized regulatory purpose, is also addressed in statute. Section 75-10-115(2), MCA, provides: "All fees collected must be deposited in the solid waste management account provided for in 75-10-117." Section 75-10-117(1), MCA, provides for a solid waste management account that, under § 75-10-117(3) MCA, "may be used only for...administration of 75-2-215, part 2 of this chapter, and this part. § 75-2-215, MCA, concerns air quality aspects of waste incineration. Title 75, chapter 10, parts 1 and 2 concern solid waste regulation. When § 75-10-117(1), MCA, is read together with § 75-10-117(3), MCA, it is clear that the solid waste fees received from UDD for the New Landfill are to be deposited in a solid waste management account and can be used only for administration and regulation of solid waste. Therefore, the flat annual renewal fee at issue here is allocated only to administration of the regulatory purpose of the license. So, the second prong of the *MDU* test also militates toward the conclusion that the flat annual renewal fee is a regulatory fee and not a tax.

→ The third prong of the *MDU* test involves the relationship between the fee charged and the services received. Under ordinary circumstances, a license is obtained and construction of the facility commences soon afterward. In this case, after the Department issued the license for the New Landfill on October 27, 2009, the Department expended about 61 hours of staff time for a total cost of about \$3,700 from November 2009 through October 2011. The work performed by Department staff was related to the regulation of the New Landfill before it was authorized to receive waste.

The Department also performed a site inspection on December 5, 2011.

The expenditure of about 61 hours of staff time, with a total cost of \$3,700, demonstrates that the Department has used some funds from the account into which the UDB annual renewal fees were deposited to conduct solid waste regulatory activities for the New Landfill. The fact that the facility had not, by October 2011, satisfied all of the operating criteria necessary for it to begin to receive waste did not eliminate the Department's duties or costs to regulate the facility. If the facility had been accepting waste during that period, an additional fee of \$0.40 per ton of waste disposed of would have been assessed, and the Department may have had to provide additional services. Therefore, services were provided to Petitioner by the Department to regulate the New Landfill.

The Department recognizes that the amount of fees invoiced, \$9,200, is greater than the costs incurred by the Department, \$3,700. This does not make the fees a prohibited tax. The assessment, collection, and expenditure of solid waste license fees are not exact endeavors. As noted above, the BER established solid

waste fees based on estimates of the Department's costs for analyzing all license applications, regulating all solid waste regulatory programs, funding pollution prevention programs, and solid waste legal work. Some of the fee money collected is used to fund the Department's work in providing technical assistance for planning, integrated waste management, and waste reduction. See § 75-10-104(3), MCA. Some of the fees are used to fund enforcement and legal work. The Department does not conduct cost-accounting on a project-specific basis for each license application and renewal. Project-specific accounting is not required by statutes or by case law. It is unnecessary for the Department to match closely the fees and the costs associated with a particular license. Rather, because the "costs must be prescribed in advance, they must of necessity be based upon estimates which it is the right and duty of the ... authorities [here, the BER] to make." *State v. Pepper* (1924), 70 Mont. 596, 605, 226 P. 1108, 1110.

The annual license renewal fees in ARM 17.50.410, Table 1, were based on a reasonable estimate of costs of regulation, and are appropriate. On balance, the annual license fee adopted by the BER and assessed by the Department satisfies the requirement of § 75-10-115(1)(b), MCA. Therefore, application of the facts and law here to the third prong of the *MDU* test, the relationship between the fee charged and the services received, shows that the annual renewal fee is a fee and not a tax.

Thus, application of the facts here to the three prongs of the *MDU* test lead the Department to conclude that the annual solid waste license fee is a permissible fee and not a prohibited confiscatory tax. Because the fee was adopted as part of a reasonable estimate of the Department's costs of regulating solid waste facilities, it is related to the cost of an annual inspection and license renewal, and so does not violate legislative intent.

Therefore, the ruling on the second question is that the annual solid waste license fees assessed on UDD during the period from October 2009 through October 2011 were permissible and did not violate legislative intent.

Given this regulatory structure, a landfill owner may avoid paying additional annual fees for a solid waste license only by applying for a license so that it obtains it close to the date the landfill is needed.

The Department is constrained by current statutes and rules to assess an annual fee for each year that a landfill has a license. Changes to the statutes and rules would be necessary to allow a landfill not to pay an annual fee for each year it is licensed.

RULING

NOW, THEREFORE, for the foregoing reasons, the Department, pursuant to § 2-4-501, MCA, rules and declares that:

1. The Department does not have discretion to issue a preliminary, initial, or conditional license to a person operating a solid waste landfill, and an annual license renewal application fee will be due during each year after the license was issued, regardless of whether the landfill is receiving waste; and
2. The annual solid waste license fees assessed on UDD during the period from October 2009 through October 2011 were permissible and did not constitute

Declaratory Ruling 2012-1-SW

confiscatory taxes. Further, they did not violate the legislative intent of § 75-10-115(1)(b), MCA.

Dated this ^{2nd} ~~1st~~ day of February, 2012

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

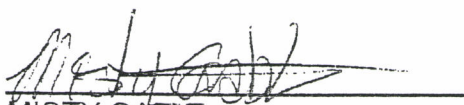

RICHARD H. OPPER, Director

NOTICE: Petitioner has the right to appeal the decision of this agency by filing a petition for judicial review in district court within 30 days after service of this decision. Judicial review is conducted pursuant to 2-4-702, MCA.

CERTIFICATE OF SERVICE

I hereby certify that on February ^{2nd} ~~1st~~, 2012, I mailed a true and correct copy of the foregoing Ruling, postage prepaid, by U.S. Mail, to the following:

Gina Dahl, Hill County Attorney
Hill County Courthouse
Havre MT 59501


MISTY GABLE

Department of Environmental Quality
 Permitting & Compliance Division
 Waste & Underground Tank Management Bureau
 Solid Waste Management Program

*Services Provided to the New UDD Class II Facility
 between 10/27/2009 through 10/31/2011*

Summary Total Expenses	2009	2010	2011	Totals
Personal Services (Salary + Benefits)	182.07	879.56	1,080.33	2,141.96
Travel/Indirects	38.24	435.66	467.71	941.61
	220.31	1,315.21	1,548.04	\$ 3,083.56
Overhead 20%	44.06	263.04	309.61	616.71
Totals	264.37	1,578.26	1,857.65	\$ 3,700.28

SERVICES

STAFF HOURS

STAFF NAME

Fall 2009 Services

Phase-IA Construction Manual Requirements (2 Contacts)	3.0	Tim Stepp
Facility FA mechanism requirements (2 Contacts)	2.0	Tim Stepp

2010 Services

Phase-IA Construction Manual Review (3 Contacts)	14.0	Tim Stepp
Facility FA mechanism requirements (2 Contacts)	2.0	Tim Stepp
License renewal & fees activities (5 contacts)	7.5	Mary Hendrickson
Site Inspection (1 contact)	2.0	Joe Blaine

2011 Services

Facility FA mechanism requirements (8 Contacts)	9.0	Tim Stepp
Storm-water discharge violation (6 Contacts)	3.0	Tim Stepp
License renewal & fees activities (8 Contacts)	11.5	Mary Hendrickson
Site Inspection (1 contact)	2.0	Kathy O'Hern

MDEQ Letter Reviews

3.0	Rick Thompson
2.0	Mary Hendrickson

Overhead

Support staff, copying, filing, etc.	20%
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Fees Paid

Date	Old Landfill	New Landfill	Comments		Work in Progress
4/9/2008	\$3,093			I	Four Years of Engineering and Planning
8/7/2008	\$3,067			I	
10/21/2008	\$3,067			I	
10/21/2008		\$12,000	Application Fee	V	Landfill Board and Public Meetings
1/23/2009	\$3,067				
4/17/2009	\$3,067				
7/20/2009	\$3,067				
September-09					State Public Hearing
10/23/2009	\$3,093				
10/26/2009			Public Hearing		
			Conditional Letter & Permit Issued	I	Bid
			Fees Begin \$1050	I	Dirt Moving
			Request for Fee \$1050	I	
2/3/2010				I	
2/3/2010	\$3,093			I	
4/23/2010	\$3,093			I	
July-10			Request for Fee \$1050	I	
8/11/2010	\$3,093			V	
8/16/2010	X		J. Blaine Inspect Old Landfill		
11/17/2010	\$3,093				Bid Shop & Fence
11/29/2010			Fee Letter - Notice to Pay \$1050	I	
1/24/2011	\$3,093			I	
4/22/2011	\$3,093			I	
5/9/2011			Fee Letter - Notice to Pay \$4900	I	
6/30/2011			Storm Water Inspection - New Landfill	V	Road Building
7/22/2011	\$3,069			I	Fencing
9/19/2011	\$3,069			I	Monitoring Wells
9/19/2011			Letter to Close Landfill Project if all Fees not Paid (Protested)	I	Utilities
10/11/2011			Kathy O'Hern Inspect Old Landfill	I	Scale Installation
10/13/2011	X		Fee to Stormwater Program - New Landfill	I	
10/25/2011		\$2,500	Fee for New Landfill	I	Total New Landfill Fees Paid to Date
11/4/2011		\$1,050	Engineer Approval - New Landfill	I	\$8,050
11/28/2011		X	New Landfill Opened	I	
12/5/2011		X	New Landfill Inspection	V	New Landfill Operating

Attachment p. 11

Review of Staff Time

Year	Staff Member	Hours	Comments
2009	Tim Stepp	5	Review Project Engineer Submittals
2010	Tim Stepp	16	Review Project Engineer Submittals
	Mary Hendrickson	7.5	Ask me to pay DEQ Fees
	Joe Blaine	2	Inspection of Old Landfill
2011	Tim Stepp	9	Review Project Engineer Submittals
	Tim Stepp	3	Stormwater ? (Fee & Permitt paid to DEQ)
	Mary Hendrickson	11.5	Asking me to Pay Fees
	Kathy O'Hern	2	Inspection of Old Landfill
	MDEQ Letters	5	I asked for a Waiver from DEQ Fees (Denied)
	Overhead	20%	Support staff, letters, copying, filing

Total

24 Hours = Trying to Collect Fees
 4 Hours = Old Landfill Inspections
 34 Hours = Review of Submittals to Meet DEQ Conditions

Conclusions and Recommendations

The Department's Solid Waste Program believes it has thoroughly reviewed the permit application and supplemental materials from the Unified Disposal District. The Solid Waste Program has also reviewed and analyzed all written comments provided during the public comment period, as documented herein. Based on the review of all the materials and comments submitted, the Department believes that a license that meets the requirements of the laws and rules for solid waste management and is protective of human health and the environment can be issued for the Unified Disposal District's new Class II Landfill.

The Department will issue the Class II license for the Unified Disposal District's new Class II Landfill based upon the approved Operations and Maintenance Plan with the following additions:

- (1) In addition to the 15 to 20 foot high litter fence on the eastern property line, the facility will install an 8-ft high litter fence along the western and southern property line.
- (2) In addition to the site perimeter fence, mobile litter fences and/or screens will be used, in addition to the daily cover requirements, for litter control.
- (3) Active landfilling activities will occur only when prevailing wind speeds are less than 25-mph.
- (4) Only petroleum-contaminated soils containing less than 5% by weight Total Petroleum Hydrocarbons will be accepted for treatment. All soils will be approved in advance by the Department prior to the facility's acceptance for treatment.

The Unified Disposal District Class II landfill will meet the minimum requirements of the Montana Solid Waste Management Act and the administrative rules regulating solid waste management. Along with the Solid Waste Management System license issued by the Department, and the approved facility Operations and Maintenance Plan, the licensee must adhere to the following license conditions:

- (1) Compliance with the conditions of the no-migration demonstration and approval including adequate conformance testing to verify barrier layer compaction
- (2) Mobile litter fences and/or screens will be used around the working face.
- (3) Active landfilling activities will occur only when prevailing wind speeds are less than 25-mph.
- (4) Only petroleum-contaminated soils containing less than 5% by weight Total Petroleum Hydrocarbons will be accepted for treatment. All soils will be approved in advance by the Department prior to the facility's acceptance for treatment.
- (5) Compliance with the conditions for a landfill composite liner waiver and alternative soil liner approval. Leachate may not be recirculated to the landfill due to the composite liner waiver.
- (6) Documentation of refrigerant removal for each unit according to U.S. EPA CFC/HCFC regulations for disposal.
- (7) No release of leachate to the storm-water detention pond or State waters unless approved and permitted by the DEQ Water Protection Bureau.

- (8) No release of storm water from the detention ponds, except for approved on-site irrigation or dust control, without the appropriate permit from the DEQ Water Protection Bureau.
- (9) No construction or disturbance of areas more than one acre unless approved and permitted the DEQ Water Protection Bureau.
- (10) No burning of materials without a Conditional Open Burning Permit from the DEQ Air Resources Management Bureau, and any other permits that may be required locally.